

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON

RAOUL MEILLEUR,

Plaintiff,

v.

AT&T CORP., a New York corporation, and  
DOES 1 through 20,

Defendants.

NO. 2:11-cv-01025 MJP

**ORDER PRELIMINARILY  
APPROVING SETTLEMENT;  
CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS; APPROVING  
NOTICE; AND SETTING DATE FOR  
FINAL APPROVAL HEARING**

**WHEREAS**, Plaintiff and Defendants have reached a proposed settlement and  
compromise of the disputes between them and other similarly situated individuals in the  
Action, which is set forth in the Settlement Agreement filed with the Court; and

**WHEREAS**, Plaintiff and Defendants have applied to the Court for preliminary  
approval of the proposed Settlement, the terms and conditions of which are set forth in the  
Settlement Agreement; and

**WHEREAS**, AT&T contends the automated outbound calling program that Mr.  
Meilleur received a call from complies fully with the Telephone Consumer Protection Act

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APPROVAL HEARING - 1  
CASE No. 2:11-cv-01025-MJP

1 (“TCPA”) and the Washington Automated Dialing and Announcing Devices Act (“WADAD”)  
2 because, among other reasons, the call was not a solicitation, and vigorously denies each of the  
3 claims asserted against it in the Action;

4 **WHEREAS**, the Court has fully considered the record of these proceedings, the  
5 Settlement Agreement and all exhibits thereto, the representations, arguments and  
6 recommendation of counsel for the Parties, and the requirements of law; and

7 **WHEREAS**, it appears to the Court upon preliminary examination that the proposed  
8 Settlement is fair, reasonable, and adequate, and that a hearing should be held after notice to the  
9 Settlement Class of the proposed Settlement to finally determine whether the proposed  
10 Settlement is fair, reasonable, and adequate and whether a Final Approval Order and Judgment  
11 should be entered in this Action based upon the Settlement Agreement.

12 **THIS COURT FINDS AND ORDERS AS FOLLOWS:**

13 1. The capitalized terms used in this Preliminary Approval Order shall have the  
14 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

15 2. The Court preliminarily approves the Settlement as fair, reasonable and  
16 adequate to the Settlement Class, as falling within the range of possible final approval, and as  
17 meriting notice of the Settlement to persons in the Settlement Class for their consideration and  
18 a full hearing on the approval of the Settlement.

19 3. The Settlement Agreement was entered into by experienced counsel and only  
20 after extensive arm’s-length negotiations involving mediation before the Hon. Edward A.  
21 Infante, an experienced mediator who served as the Chief Magistrate Judge of the United States  
22 District Court for the Northern District of California before his retirement from the federal  
23 bench. The Settlement Agreement is not the result of collusion.

24 4. For purposes of the Settlement only, the Court conditionally certifies the  
25 Settlement Class, which consists of:  
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All persons within the United States who between July 30, 2008 and May 29, 2012 received a telephone call pursuant to the Calling Program who had not selected AT&T Corp. as their presubscribed long distance carrier at the time of the call, plus all California residents who received a call under the Calling Program and were on AT&T's internal do-not-call list at the time they received the call.

Excluded from the Class are the following : (1) Any trial judge that may preside over this case; (2) Defendants, any parent, subsidiary, affiliate or control person of defendants, as well as the officers, directors, agents, servants or employees of defendants; and (3) the immediate family members of any such person(s).

5. The Court preliminarily finds, solely for purposes of considering this Settlement that:

- a. The above-described Settlement Class is so numerous that joinder of all members is impracticable;
- b. There are questions of law or fact common to the Settlement Class, including whether the Calling Program constituted a solicitation;
- c. The claims of the Settlement Class Representative are typical of the claims of the Settlement Class;
- d. The Settlement Class Representative will fairly and adequately protect the interest of the Settlement Class;
- e. The questions of fact or law common to the members of the Settlement Class predominate over the questions affecting only individual members; and
- f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy.

1           6.       The Court finds that it has personal jurisdiction over all Settlement Class  
2 members, including the absent Settlement Class members.

3           7.       The Named Plaintiff, Raoul Meilleur, shall be the Settlement Class  
4 Representative of the Settlement Class; this Court preliminarily finds that he will fairly and  
5 adequately represent and protect the interests of the absent Settlement Class members.

6           8.       The Court appoints the law firms of Terrell Marshall Daudt & Willie PLLC and  
7 Williamson & Williams as Settlement Class Counsel; this Court preliminarily finds that they  
8 are competent, capable of exercising all responsibilities as Class Counsel and will fairly and  
9 adequately represent and protect the interests of the absent Settlement Class members.

10          9.       A Final Approval Hearing shall be held before this Court at 9:00 AM on March  
11 8, 2013 to address (a) whether the proposed Settlement should be finally approved as fair,  
12 reasonable and adequate and whether the Final Approval Order and Judgment should be  
13 entered; and (b) whether Class Counsel's Fee and Cost Application and Incentive Award for  
14 Named Plaintiff should be approved. Papers in support of final approval of the Settlement, the  
15 incentive award to Named Plaintiff, and Class Counsel's Fee and Cost Application shall be  
16 filed with the Court according to the schedule set forth in Paragraph 18 below. The Final  
17 Approval Hearing may be postponed, adjourned, or continued by order of the Court without  
18 further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a  
19 Final Approval Order and Judgment in accordance with the Settlement Agreement that will  
20 adjudicate the rights of all Settlement Class members with respect to the Released Claims being  
21 settled.

22          10.      The Court approves, as to form and content, the use of the Claim Form and  
23 written Notice substantially similar to the forms attached as Exhibits A and D to the Settlement  
24 Agreement, respectively. Written Notice will be provided to members of the Settlement Class  
25 by first-class U.S. mail using AT&T's records of telephone numbers it called or attempted to  
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1 call under the Calling Program and a reverse look-up process, updated by the Claims  
2 Administrator in the normal course of business, and returned mail shall be run through a skip  
3 tracing process. A postage-prepaid postcard Claim Form shall be included with the Notice. All  
4 Notices shall be mailed within 90 days of the date of entry of this Preliminary Approval Order.  
5 No later than five business days prior to the Final Approval Hearing, the Settlement  
6 Administrator and AT&T shall file with the Court declarations attesting to compliance with this  
7 Order.

8 11. The costs of Notice shall be paid by AT&T, as provided in the Settlement  
9 Agreement.

10 12. The Notice, as directed in this Order, constitutes the best notice practicable  
11 under the unique circumstances of this case and is reasonably calculated to apprise the  
12 Settlement Class of the pendency of this Action and their right to object to or exclude  
13 themselves from the Settlement Class. The Court further finds that the Class Notice program is  
14 reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to  
15 receive notice and that it meets the requirements of due process and Federal Rule of Civil  
16 Procedure 23.

17 13. Any member of the Settlement Class who desires to be excluded from the  
18 Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must  
19 submit to the Settlement Administrator, pursuant to the instructions and requirements set forth  
20 in the Notice, a timely and valid written request for exclusion postmarked no later than 45 days  
21 after the completion of the Notice period.

22 14. Each request for exclusion must be personally signed by the individual  
23 Settlement Class member; any so-called "mass" or "class" opt-outs shall not be allowed. No  
24 person shall purport to exercise any exclusion rights of any other Person, or purport to exclude  
25 any other Settlement Class member as a group, aggregate or class involving more than one  
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1 Settlement Class member, or as an agent or representative. Any such purported exclusion shall  
2 be void and the Person(s) that is/are the subject of the purported opt-out shall be treated as a  
3 member of the Settlement Class and be bound by the Settlement.

4 15. Any member of the Settlement Class who elects to be excluded shall not be  
5 entitled to receive any of the benefits of the Settlement, shall not be bound by the release of any  
6 claims pursuant to the Settlement Agreement, and shall not be entitled to object to the  
7 Settlement or appear at the Final Approval Hearing.

8 16. Any Settlement Class member who does not submit a valid and timely request  
9 for exclusion may object to the proposed Settlement, or to Settlement Class Counsel's Fee and  
10 Cost Application. Any such Settlement Class member shall have the right to appear and be  
11 heard at the Final Approval Hearing, either personally or through an attorney retained at the  
12 Settlement Class member's own expense. Any such Settlement Class member must file with  
13 the Court and serve on counsel for AT&T and Settlement Class Counsel a written notice of  
14 intention to appear together with supporting papers including a detailed statement of the  
15 specific objections made no later than 45 days after the conclusion of the Notice period. Any  
16 Settlement Class member that fails to do so shall be foreclosed from making such objection or  
17 opposition, by appeal, collateral attack or otherwise.

18 17. Stay/Bar of Other Proceedings. All proceedings in this Action are stayed until  
19 further order of the Court, except as may be necessary to implement the terms of the  
20 Settlement. Pending final determination of whether the Settlement should be approved,  
21 Plaintiffs, all persons in the Settlement Class and all persons purporting to act on their behalf  
22 are enjoined from commencing or prosecuting (either directly, representatively or in any other  
23 capacity) any released claim against any of the released parties in any action, arbitration or  
24 proceeding in any court, arbitration forum or tribunal.

1           18.     Schedule of Future Events. Further settlement proceedings in this matter shall  
 2 proceed according to the following schedule:

EVENT	SCHEDULED DATE
Notice deadline	90 days after entry of Preliminary Approval Order
Fee and Cost Application Due	30 days prior to the deadline to opt out or object to the Settlement
Parties' briefs in support of the Settlement due	30 days prior to the deadline to opt out or object to the Settlement
Last day for Settlement Class members to opt-out of the Settlement	45 days after completion of the Notice period
Last day for objections to the Settlement to be filed with the Court	45 days after completion of the Notice period
Parties file responses to objections, if any	No later than 15 days after the deadline for objections to the Settlement.
Final Approval Hearing	No earlier than 7 days after the submission of the Parties' responses to any objections.
Last day to submit a valid Claim Form	60 days after entry of the Final Approval Order
Payment of Incentive Award	20 days after later of Effective Date or when the order on the Fee and Cost Application is final and non-appealable
Payment of Attorneys' Fees and Costs	20 days after later of Effective Date or when the order on the Fee and Cost Application is final and non-appealable
Payment to Settlement Class members	Reasonably promptly after the later of the Effective Date or the closure of the claim period.

1           19.     Service of all papers on counsel for the parties shall be made as follows: for  
2 Settlement Class Counsel: to Beth Terrell, Terrell Marshall Daudt & Willie PLLC, 936 N. 34<sup>th</sup>  
3 St. Suite 400, Seattle, Washington, 98103, and Rob Williamson, Williamson & Williams,  
4 17253 Agate Street NE, Bainbridge Island, Washington, 98110. For Defendants: Theodore  
5 Livingston, Mayer Brown LLP, 71 S. Wacker Drive, Chicago, IL, 60606.

6           20.     In the event that the Final Approval Order and Judgment is not entered by the  
7 Court, or the Effective Date of the Settlement Agreement does not occur, or the Settlement  
8 Agreement otherwise terminates according to its terms, this Order and all orders entered in  
9 connection therewith shall become null and void, shall be of no further force and effect, and  
10 shall not be used or referred to for any purposes whatsoever, including without limitation for  
11 any evidentiary purpose (including but not limited to class certification), in this Action or any  
12 other action; in such event the Settlement Agreement, exhibits, attachments, and all  
13 negotiations and proceedings related thereto shall be deemed to be without prejudice to the  
14 rights of any and all of the parties, who shall be restored to their respective positions as of the  
15 date and time immediately preceding the execution of the Settlement Agreement.

16           21.     The Court may, for good cause, extend any of the deadlines set forth in this  
17 Order without further notice to the Settlement Class members.

18           IT IS SO ORDERED.

19           Dated this 7th day of August, 2012.

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22 Marsha J. Pechman  
23 United States District Judge  
24  
25  
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